

Appl. No. 10/646,041
Amdt. dated December 29, 2006
Reply to Office action of October 2, 2006

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REMARKS/ARGUMENTS

Claims 1-20 remain in this application.

Regarding the 35 U.S.C. 112, second paragraph rejection of claim 9, Applicant notes that a filler composition of clay and limestone is discussed in the Specification at page 6, lines 6-7. Furthermore, it is well known to those of ordinary skill in the art that commercially available cat litter contains clay and limestone ("Fresh Step® Scoopable contains odor-eliminating carbon, bentonite clay, limestone, fragrance and borates," <http://www.freshstep.com/faq.php>). Applicant therefore respectfully requests that the rejection be withdrawn.

Regarding the 35 U.S.C. 112, first paragraph rejection of claims 1-20, Applicant notes that it is known to those of ordinary skill in the art that elemental sulfur, when placed in a burrow when the soil is moist, releases poisonous sulfur dioxide gas that is capable of killing a gopher (see: <http://extension.oregonstate.edu/catalog/pdf/ec/ec1255.pdf>, page 3). The odor of sulfur is also known to those of ordinary skill in the art to repel gophers, as is the odor of castor oil (see: http://www.hgtv.com/hgtv/gl_diseases_pests_animals/article/0,1785,HGTV_3578_3910358,00.html). Therefore, Applicant believes that there is sufficient basis to regard the stake as being poisoned and of being capable of killing a mole or causing a mole to vacate an area where the stake is installed. Crumbling of the stake as described in claim 16 could easily be accomplished using mechanical means, such as hitting it with a rock, or by exposing it to moisture. Furthermore, "inhibit" is well known to those of ordinary skill in the art to mean "to hold in check: restrain" and "to discourage from free or spontaneous activity..." (<http://www.m-w.com/dictionary/Inhibit>). The known reactions of moles and gophers to elemental sulfur, sulfur dioxide gas, and castor oil certainly meet the commonly accepted definitions of "inhibit." In light of the above, Applicant respectfully requests that the rejection be withdrawn.

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Claim 1 overcomes the 35 U.S.C. 103(a) rejection because it includes the invention having sulfur and molding a spike-shaped moistened composite. The cited and relied upon Kendall et al. (2003/0024169) is from the field of abrasive articles, which is not pertinent to the problem solved by the current invention. Therefore, the Kendall et al. reference should not be considered by the Examiner. The Federal Circuit has stated that the references must be "reasonably pertinent to the particular problem with which the inventor is involved" and that "common sense" must be used to decide "in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor." Furthermore, Kendall et al. teaches mercapto compounds. These are rubber accelerators (see:

<http://www.dermatology.org.uk/portal/downloads/Mercapto%20Chemicals.doc>). There is no evidence that they are capable of producing poisonous sulfur dioxide gas when placed in damp soil, nor is there evidence that they repel gophers. Furthermore, such compounds might present an environmental hazard, although there are many sulfur compounds that are less toxic than other naturally occurring sulfur compounds and elemental sulfur (see: http://www.columbiagasva.com/safety_info/mercaptan.htm). In contrast, the current invention uses elemental sulfur, which is known to both repel gophers and produce poisonous sulfur dioxide gas. The cited and relied upon Dady (1,296,771), Weiser et al. (D324,558), and Carvalho et al. do not teach a stake that is integrally formed by poisonous and/or repellent compounds. Such compounds must be added to the stake before they can be dispensed. This requirement renders the prior art much less convenient to use. The dependent claims 2-10 add additional novel features to the independent claims recited above and thus are submitted to be a-fortiori, patentable.

Claim 11 overcomes the 35 U.S.C. 103(a) rejection because it includes the invention comprising a poisoned stake device made from the method of claim 1. The dependent claims 12 and 13 add additional novel features to the independent claims recited above and thus are submitted to be a-fortiori, patentable.

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Claim 14 overcomes the 35 U.S.C. 103(a) rejection because it includes the invention having the step of obtaining the poisoned stake device sealed in the container made from the method of claim 2. The dependent claims 15-20 add additional novel features to the independent claims recited above and thus are submitted to be a-fortiori, patentable.

In view of the above, it is respectfully submitted that:

Claims 1-20 recite distinctions that are of patentable merit under 35 U.S.C. 112, first and second paragraphs, and 35 U.S.C. 103(a) for the independent claims and thus for each dependent claim as well. Specifically, sulfur and molding a spike-shaped moisten composite was unsuggested among the prior art references.

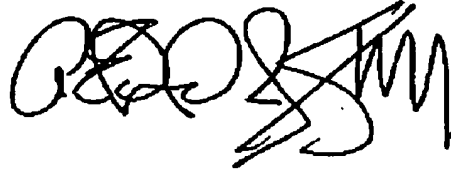
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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



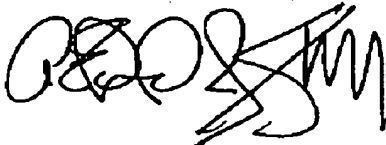
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I hereby certify that this correspondence is being transmitted by fax to the United States Patent and Trademark Office, Fax No. 571-273-8300 on the date shown below.

Anthony Edw. J Campbell



Friday, December 29, 2006